

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEVIN HAGAN,

Plaintiff,

v.

RAUL RE CAREY, *et al.*,

Defendants.

Case No. 1:22-cv-00562-JLT-EPG (PC)

ORDER GRANTING MOTION TO
WITHDRAW AS COUNSEL

(ECF No. 56)

Before the Court is a motion to withdraw as counsel by Attorney Benjamin Rudin (“Attorney Rudin”), counsel for Plaintiff Kevin Hagan (“Plaintiff”). (ECF No. 56). On September 11, 2024, Attorney Rudin filed the motion, stating that good cause exists to withdraw “because Plaintiff has rendered carrying out his representation unreasonably difficult.” (*Id.* at 1, citing Cal. R. Prof. Conduct 1.16(b)(4) (additional citation omitted)). On October 23, 2024, Plaintiff filed an opposition to the motion in which he acknowledged that, after an argument, he called Attorney Rudin “worthless.” (ECF No. 58).¹ The Court held a hearing on the motion on October 18, 2024. With consent of defense counsel, portions of the hearing were conducted *ex parte* and remain under seal.

¹ Plaintiff concludes his opposition: “If it is decided that the removal of my attorney is warranted, the[n] I respectfully ask the court to appoint another counsel to represent me[.]” (ECF No. 58 at 2). Plaintiff is welcome to file another motion for the appointment of counsel. *See* ECF No. 53 (Plaintiff’s previous motion). However, as the Court explained to Plaintiff at the October 18, 2024, hearing, the appointment of pro bono counsel is an extraordinary action that the Court grants only in the most serious and exceptional circumstances.

For the reasons stated more fully on the sealed record, and as set forth below, the Court grants the motion to withdraw.

I. DISCUSSION

Local Rule 182(d) governs the withdrawal of counsel:

Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit.

E.D. Cal. LR 182(d). Under the California Rules of Professional Conduct concerning an attorney's authority to permissively withdraw from representation, one ground for withdrawal is where "the client by other conduct renders it unreasonably difficult for the lawyer to carry out the representation effectively." Cal. R. Prof. Conduct 1.16(b).

Courts maintain the discretion to grant or deny a motion to withdraw as counsel. *LaGrand v. Stewart*, 133 F.3d 1253, 1269 (9th Cir. 1998). In considering such a motion, courts may consider: "(1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case." *Leatt Corp. v. Innovative Safety Tech., LLC*, No. 09-CV-1301-IEG (POR), 2010 WL 444708, at *1 (S.D. Cal. Feb. 2, 2010). "Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit." Local Rule 182(d).

To preserve confidentiality, and with consent of defense counsel, the Court heard the specific reasons for Attorney Rudin's motion to withdraw *ex parte*. Upon consideration of those reasons, and upon unsealing the transcript, the Court concluded that Plaintiff has rendered representation unreasonably difficult. Additionally, the Court found that there has been a total breakdown of communication that would prevent an effective attorney-client relationship.

Accordingly, the Court concludes that Attorney Rudin's withdrawal as counsel for Plaintiff is warranted under the provisions of California Rule of Professional Conduct 1.16(b). As

1 explained at the hearing, as the withdrawal presently leaves Plaintiff without representation, the
2 Court shall grant Plaintiff 60 days to notify the Court if he wishes to proceed with his case, with
3 or without substitute counsel.

4 **II. CONCLUSION AND ORDER**

5 Accordingly, IT IS ORDERED as follows:

- 6 1. The motion to withdraw (ECF No. 56) is granted.
 - 7 a. The Clerk of Court is directed to terminate Attorney Benjamin Rudin as Plaintiff's
8 counsel on the docket.
 - 9 b. The Clerk of Court is directed to add the following address for Plaintiff on the
10 docket and to serve all future Court orders (including this order) at this address:
11 Kevin Hagan, AM-6145, CSATF/SP, P.O. Box 5244, Corcoran, CA, 93212.
 - 12 i. If Plaintiff's address changes, he is directed to immediately file a statement
13 with the Court with his new address. Failure to do so may result in the
14 dismissal of this case. E.D. Cal. LR 183(b).
- 15 2. Within 30 days after entry of this order, Attorney Rudin shall provide Plaintiff with a copy
16 of his complete case file if he has not already done so.
- 17 3. Within 60 days of the date of service of this order, Plaintiff shall file a signed and dated
18 statement notifying the Court that either:
 - 19 a. Plaintiff has obtained new counsel, and if not, whether he intends to proceed
20 without counsel in this case. If Plaintiff obtains new counsel, the attorney may file
21 a notice of appearance on the record by no later than January 10, 2025; or
 - 22 b. Plaintiff wishes to voluntarily dismiss this case without prejudice.
- 23 4. If new counsel timely appears, or if Plaintiff timely files a statement that he intends to
24 proceed without counsel, the Court will proceed with scheduling this case.
- 25 5. Aside from the direction provided in this order, the case is otherwise STAYED pending
26 the receipt of notice as to how Plaintiff intends to proceed.

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6. If Plaintiff fails to comply with this order, he is advised that this case may be dismissed.

IT IS SO ORDERED.

Dated: October 18, 2024

/s/ Eric P. Groj
UNITED STATES MAGISTRATE JUDGE